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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 64

CLYDE HYSLER,

Petitioner,

vs.

STATE OF FLORIDA.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA.

REPLY BRIEF OF PETITIONER.

CARLTON C. ARNOW,
P. GUY CREWS,
Counsel for Petitioner.

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STATE OF FLORIDA,

Respondent.

REPLY BRIEF OF PETITIONER TO RESPONDENT'S SECOND BRIEF.

Preliminary Statement.

We shall discuss the portion of the respondent's second brief under the various subheadings designated under the main head of argument.

Argument.

The first subheading of the State of Florida is as follows:

> "Writ of Error Coram Nobis will not lie to relieve one of a judgment of conviction because of false perjured testimony given at the trial by an important witness" (Respondent's brief, page 2).

The foregoing is the first statement of law set forth in the respondent's brief under the main heading of argument, and is not in our opinion a fair statement based on the facts set up in the petitioner's petition filed in the Supreme Court of Florida wherein the petitioner moved the Supreme Court of Florida for permission to file a petition for Writ of Error *Coram Nobis* in the lower court. From the respondent's brief under this heading it would appear that the petitioner merely charged that one of the co-defendants gave false testimony and that petitioner's conviction was not based primarily upon such false testimony. (Respondent's brief, page 3:) The petition filed in the Supreme Court of Florida set up that the only evidence to connect the petitioner with the alleged crime of murder was the testimony of the two co-defendants, Alvin Tyler and James Baker, and that the reason that the two co-defendants testified falsely against the petitioner was due solely to the fact that the prosecuting officers for the State of Florida had promised them that the two co-defendants would be given life sentences and later a pardon rather than be sentenced to death for their participation in said crime of murder (R. 2-3).

Further in paragraph six of the petition filed in the Supreme Court of Florida the petitioner set forth (R. 4) that if the two co-defendants had testified truthfully that no judgment would have been rendered against the petitioner.

It is further set out in the petition filed in the Supreme Court of Florida that in addition to the promises made to the two co-defendants that the two co-defendants were coerced and intimidated (R. 2).

Attached to the petition filed in the Supreme Court of Florida were four sworn statements of James Baker itemized as "Exhibits a, b, c, and i" (R. 6-16 and 21). Exhibit "i" in the petition is a letter written by the co-defendant James Baker and later sworn to as true by him (R. 21).

It is true that the Supreme Court of Florida held in its order denying petitioner's application that the Writ of Error *Coram Nobis* would not lie because of false testimony given at the trial by an important witness as claimed in respondent's brief (Page 3). We do not rely however on the fact that an important witness testified falsely but in addition charged that the false testimony was obtained by force and duress and the hope of reward coming from the law enforcement officers and the prosecuting officers, and rely upon the following *Chambers* cases.

1. *Chambers, et al.;* v. *State*, 111 Fla. 707, 151 So. 499, 152 So. 437;

2. *Chambers, et al.*, v. *State*, 113 Fla. 786, 152 So. 437;

3. *Chambers, et al.*, v. *State*, 117 Fla. 542, 158 So. 153;

4. *Chambers, et al.*, v. *State*, 123 Fla. 734, 167 So. 697;

5. *Chambers, et al.*, v. *State*, 136 Fla. 568, 187 So. 156;

6. *Chambers, et al.*, v. *State of Florida*, 309 U. S. 227, 60 S. Ct. 472, 84 L. Ed. 716.

The fact that the witness testified falsely is not ground for Writ of Error *Coram Nobis* under the laws of the State of Florida. However, where the only testimony to connect a person with a crime for which he has been convicted is perjured testimony and that testimony is obtained by the hope of reward or by duress or by both, then a different situation is presented and a Writ of Error *Coram Nobis* will lie. This was the holding in the second *Chambers* case, *supra*, and the holding of the United States Supreme Court in the sixth *Chambers* case *supra*, Furthermore the *Chambers* cases are the latest expression of the Supreme Court of Florida in regards to when a Writ of Error *Coram Nobis* should be granted. Another feature of this case that should not be overlooked is the fact that the State of Florida has not denied any of the facts alleged in the petition filed in the Supreme Court of Florida. In the second *Chambers*

case, *supra*, the Supreme Court of Florida held that it was for a jury to determine whether the facts stated on the application for Writ of Error *Coram Nobis* were true.

The State of Florida relies on the case of *Mooney* v. *Holohan*, 294 U. S. 103, 79 L. Ed. 791. We cannot see where the *Mooney* case has anything to do with the case at bar because the basis for the Mooney decision was that there was no remedy for one in the position of Mooney that could be granted under the laws of the State of California. In Florida there is a remedy that has been granted to others similarly situated as the petitioner, Hysler. On the application for a stay order it was pointed out to the court that this was the difference between the *Mooney* case and the case at bar. The petitioner's case comes squarely within the law as enunciated in the *Chambers* cases, *supra*.

We therefore urge the court that the argument of the State of Florida under the first subheading sets forth no reason or authority why the judgment of the Supreme Court of Florida should not be reversed.

The second proposition discussed by the State of Florida is as follows:

> "The application, and exhibits thereto, filed in the Supreme Court of Florida by the petitioner for leave to apply for a Writ of Error Coram Nobis, failed to affirmatively show any denial to him by the State of Florida of the equal protection of law guaranteed under the Fourteenth Amendment of the Constitution of the United States."

Under this heading it would appear that the State of Florida is of the opinion that the petitioner, Hysler relies upon a racial discrimination. Such is not the case because the petitioner, Hysler relies upon the fact that he was convicted on the perjured testimony of two young negroes, co-defendants who testified falsely because of the hope of re-

ward and because of duress coming from the law enforcement and prosecuting officers and that where such a conviction is obtained a refusal to grant the petitioner a leave to obtain a Writ of Error *Coram Nobis* is a denial of the equal protection guaranteed to him under the Fourteenth Amendment to the United States Constitution, and it makes no difference whether the convicted persons be white or black. The *Chambers* case, *supra*, was wholly silent on any racial question and the racial question did not enter into the reasons stated either by the Supreme Court of Florida or by the United States Supreme Court.

The third subheading of the State of Florida is as follows:

> "The application, and exhibits thereto, filed in the Supreme Court of Florida by the petitioner for leave to apply for a Writ of Error Coram Nobis, failed to affirmatively show any denial to him by the State of Florida of the due process of law guaranteed under the Fourteenth Amendment of the Constitution of the United States."

We admit as charged by the State of Florida in its argument under this heading that the co-defendant James Baker repudiated his testimony given at the trial. In addition to this it is perfectly apparent from the record that Baker expected to die the next week and desired to meet his Maker with a clear conscience (R. 9).

It is next alleged by the State of Florida that Baker in his affidavits does not deny the truth of his testimony given at the trial wherein the petitioner Hysler was convicted. The purport and unescapable conclusion from Baker's affidavits is that his testimony given at the trial was false. This is also true in regard to the testimony given by Tyler the other co-defendant. Baker's affidavits plainly show that Tyler also testified falsely for the same reason that Baker testified falsely.

It is claimed that Baker's affidavits are inconsistent. We do not in any way see how this charge can be made. Baker is an ignorant young negro and his answers to questions asked him have all of the grammatical errors and characteristics of uneducated negroes found in the South, yet, a casual reading of them carry with it an abiding conviction that Baker was telling the truth in his affidavits. He expected to die the next week and was confined in a death cell a few feet from the electric chair without a friend to console him, vividly impressed with the gravity of his own position. The State of Florida may pick out portions of his statements and charge that he is not telling the truth but we cannot agree with the State of Florida on that score. It is not the province of the attorneys for the State of Florida to pass upon whether or not Baker is telling the truth, but that question is for a jury to decide and it was for that purpose that the petition was filed in the Supreme Court of Florida by Hysler in order that a jury might pass upon the truthfullness of Baker's statement.

The State of Florida in its brief charges that none of the other supporting affidavits show whether the persons making those affidavits were related to the petitioner, Hysler and carry with this charge the veiled suggestion that those persons were related to Hysler. This has nothing to do with the issues because it will be for a jury to pass upon the truthfulness of those other persons. Had they been related or had counsel believe that the relation of the witnesses to be material their affidavits would certainly have shown their relation. Furthermore it is charged that the persons making the supporting affidavits remained silent during the past four years. An examination of their affidavits show that their testimony relates to matters occurring after the conviction of the petitioner, and all of the affidavits were made in the year 1941.

In regards to the affidavits of the Honorable W. J. Sears, Jr., and the Honorable H. L. Anderson, we point out that they were not the attorneys for Baker or Tyler and that they attempted to determine from Baker and Tyler the truth in order to show that the petitioner, Hysler used diligence in trying to produce true testimony at the trial which is one of the prerequisites to the granting of a Writ of Error *Coram Nobis.* At the time Mr. Sears and Mr. Anderson talked to Baker and Tyler, Baker and Tyler had already been coerced and had already been promised a reward and so it is little wonder that Baker and Tyler did not tell Mr. Sears and Mr. Anderson the truth.

In the *Chambers*, case, *supra*, the attorney for Chambers had no reason to disbelieve the witnesses who testified against Chambers. Writ of Error *Coram Nobis* was granted in the *Chambers* case, notwithstanding.

It is next alleged that there could have been a conviction of Hysler without the testimony of Baker or Tyler. Excerpts from the testimony quoted by the State of Florida, as a basis for this argument falls far short of showing that Hysler had any connection with the killing of Mamie Elizabeth Surrency.

The Chief Justice of the Supreme Court of Florida did not agree with the other members of the Court in denying the petitioner the right to apply to the lower court for a Writ of Error. *Coram Nobis.* We believe that the facts set up in the petition filed by the petitioner, Hysler in the Supreme Court of Florida should be determined by a jury and that the Chief Justice did not want to substitute his opinion on the facts for that of a jury.

Conclusion.

In conclusion we contend that the respondent's brief does not meet the issues made before the Supreme Court of the

United States, and that the case at bar is squarely on all points with the *Chambers* cases, *supra*.

All the petitioner is asking to do is to have a jury in Duval County, Florida pass upon the truthfulness of the facts alleged in his petition filed in the Supreme Court of Florida and to determine whether or not all of the testimony introduced against him to convict him of the murder for which he stands convicted and sentenced to die was false, and procured through unlawful means by the representatives of the State of Florida. If it was false and his conviction rests solely upon false testimony, right and justice should entitle him to a hearing to determine that fact.

Respectfully Submitted:

CARLTON C. ARNOW,
Attorney for Petitioner,
203 Realty Building,
Jacksonville, Florida.

P. GUY CREWS,
Attorney for Petitioner,
203 Realty Building,
Jacksonville, Florida.